

Amendment and Response  
NXL-002  
U.S. Serial No. 10/760,000  
Page 5

### **REMARKS**

Claims 1-20 were presented for examination. As a result of Applicant's August 16, 2005 response to a restriction requirement, claims 2, 3, 6 and 15-17 have been withdrawn from consideration. The Office Action mailed August 23, 2005 rejects claims 1, 4, 5, 7-14 and 18-20. This paper amends claims 1 and 7-9, and cancels claims 18-20. Claims 1-17 remain pending in the application.

Applicant has amended claim 1 to more clearly recite Applicant's invention. Claims 7-9 are amended to correct for antecedent basis.

### **Objections to claims 19 and 20**

The Office Action objects to method claims 19 and 20 as not reciting any active steps. Applicant herein cancels claims 19 and 20, thus the objections are moot.

### **Rejection of claims 1, 4, 5, 7-12, 14 and 18-20 under 35 U.S.C. § 103(a)**

The Office Action rejects claims 1, 4, 5, 7-12, 14 and 18-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,761,381 by Blatt et al. (hereafter "Blatt") in view of U.S. Patent No. 4,997,266 to Mitchell (hereafter "Mitchell"). Applicant respectfully traverses the rejection.

Applicant's invention is directed to a single-use chamber for counting cells and other microscopic particles. The chamber includes a counting grid having precisely spaced lines. The thickness of the gap defined between the top and bottom parts of the chamber is precisely controlled by a connecting spacer having a thickness determined according to the size of the particles to be counted. Because the volume of the chamber is accurately defined, the particle concentration in the liquid can be accurately determined.

Blatt discloses a capillary device that permits testing of a liquid sample with a reactive material. The reactive material is capable of detecting a component of interest in the liquid sample, for example, by changing color. The device draws the liquid through capillary action

Amendment and Response  
NXL-002  
U.S. Serial No. 10/760,000  
Page 6

onto the reactive material. Excess liquid is drawn into an overflow chamber. The device ensures uniform coverage of the surface of the reactive material.

Mitchell discloses a method for forming an eroded pattern on a metal mold insert. The method employs electrical discharge machining to form the features on the metal insert. The insert is used in a separate process for molding plastic for microscope slides.

Unlike Applicant's claimed invention and contrary to the assertion in the Office Action, Blatt is not concerned with counting particles. Instead, Blatt is concerned with determining whether certain components are present in the liquid sample, for example, by observing a change in color of a reactive material. Consequently, one of ordinary skill in the art would not look to combine a grid pattern, such as the one resulting from use of the mold insert fabricated according to Mitchell, with the device described in Blatt. Moreover, modifying Blatt's device to include a counting grid renders Blatt's device unsuitable for its intended purpose. Therefore, there is no teaching or suggestion to combine these two references to produce Applicant's invention. Consequently, Applicant respectfully requests that the rejection be withdrawn.

Claims 4, 5, 7-12 and 14 depend directly or indirectly from patentable independent claim 1 and incorporate all of its limitations, and therefore are also patentably distinguishable over the cited references for at least those reasons provided in connection with claim 1. Therefore, the Applicant respectfully requests that the rejection against these claims also be withdrawn.

**Rejection of claim 13 under 35 U.S.C. § 103(a)**

The Office Action rejects claim 13 under 35 U.S.C. §103(a) as being unpatentable over Blatt in view of Mitchell and further in view of U.S. RD 35,589 to Fisch (hereafter "Fisch"). Applicant respectfully traverses the rejection.

Fisch teaches a transparent slide having a grid etched into its lower surface. As discussed above for claim 1, one of ordinary skill in the art would not look to combine a grid pattern with the device described in Blatt. Therefore, there is no teaching or suggestion to

Amendment and Response  
NXL-002  
U.S. Serial No. 10/760,000  
Page 7

combine these three references to produce Applicant's invention as recited in claim 13.

Consequently, Applicant respectfully requests that the rejection be withdrawn.

Amendment and Response  
NXL-002  
U.S. Serial No. 10/760,000  
Page 8

### CONCLUSION


In view of the arguments made herein, Applicant submits that the application is in condition for allowance and requests early favorable action by the Examiner.

If the Examiner believes that a telephone conversation with the Applicant's representative would expedite allowance of this application, the Examiner is cordially invited to call the undersigned at (508) 303-2003.

Respectfully submitted,

Date: October 6, 2005  
Reg. No. 41,047

Tel. No.: (508) 303-2003  
Fax No.: (508) 303-0005

  
William G. Guerin  
Attorney for Applicant  
Guerin & Rodriguez, LLP  
5 Mount Royal Avenue  
Marlborough, MA 01752